IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.801 OF 2006

Anil Kumar K.P. Nair ....Petitioner

V/s.

Swagat Sahkari Pathpedhi Ltd. & Ors. ....Respondents

Mr.M.M. Pillai for the Petitioner.

Mr.A.H. Palekar, AGP for Respondent Nos.1 to 3.

Mr.R.A. Thorat for Respondent No.5.

CORAM : R.M. SAVANT, J.
DATED : 5TH JUNE, 2007.

P.C. :

1. By this Petition filed under Article 227 of the Constitution of India, the Petitioner impugns the order dated 7.3.2005 passed by the Divisional Joint Registrar, Co-operative Societies. The proceedings have arisen out of a certificate issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960. The Petitioner had availed of a loan from Respondent No.1 - Co-operative society in the sum of Rs.30,000/-. On account of default committed by the Petitioner, Respondent No.1 proceeded under Section 101 of the MCS Act for recovery of the outstanding

amount with interest which total comes to Rs.60,000/-. The Deputy Registrar, Co-operative Societies issued the recovery certificate on 28.1.2003. The Petitioner being aggrieved by the said certificate, filed a Revision Application under Section 154 of MCS Act, challenging issuance of the said certificate. The said Revision came to be dismissed by the Divisional Joint Registrar by an order dated 17.3.2005 which is impugned in the present Petition.

2. It is the case of the Petitioner that a fraud has been played upon the Petitioner in as much as the Petitioner has never availed of the said loan and that Respondent No.5 herein taking disadvantage of the Petitioner's absence has forged certain documents and availed of the amount in the name of the Petitioner. The Petitioner seeks to rely upon a compilation of documents including the opinion of handwriting expert which he has procured privately.

3. On the other hand, it is the case of the Respondents that the Petitioner has availed of the said loan of Rs.30,000/- which has also been admitted by the Petitioner in his advocate's letter dated 31.5.2005, which is a part of the compilation tendered by the Petitioner at the time of hearing of the above

Petition. In paragraph 5 of the said letter, it is stated that the Bank having only lent a sum of Rs.30,000/- in the year 2000, and in return received a sum of not less than Rs.80,000/-. The learned counsel for the Respondents therefore states that there is no dispute about the factum of the loan being taken by the Petitioner.

4. Both the authorities below on the basis of the documents have held that the Petitioner was in default and have therefore, issued recovery certificate, which is confirmed by the Revisional Authority. I do not find any illegality or infirmity in the orders passed by the authorities below for this court to interfere in the extra-ordinary writ jurisdiction under Article 227 of the Constitution of India.

5. The Petitioner basis his case on fraud and for that he relies upon a judgment of the Appeal Court in *Lazarus Estates Ltd. versus Beasley, (1956) 1 All E.R. 341*, for the proposition that fraud vitiates everything. There can be no quarrel with the said propositions, however in the instant case there is material to show that the Petitioner had in fact availed of the loan.

6. In that view of the matter, no case for interference is made out, the Petition is accordingly dismissed. Needless to say that dismissal of the Petition would not come in the way of the Petitioner prosecuting the remedy which he has already adopted by filing a criminal case.

(R.M. SAVANT, J)